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Current Topics.

The Law Society at Sheffield.

SEVERAL matters of particular interest to the profession were discussed at the eminently successful meeting of the Law Society this week at Sheffield. A full report of the proceedings will appear in our special number next week. The President in his address took advantage of the occasion to survey the progress made by our law during the last half century. His survey had naturally to be a brief one; for he had to cover a wide field of topics ranging from the relative position of the two branches of the profession to the development of joint stock companies, and the law of carriage of goods by sea. The presidential condemnation of extraordinary tribunals which it is the growing practice to set up will receive general support among all members of the profession and the apprehension with which the president viewed the growth of bureaucratic legislation seems to be growing general amongst those who are called upon to administer the law. The Lord Chief Justice did not hesitate to be outspoken upon the practice. On the question of amalgamation of the two branches of the profession, the president's words undoubtedly represent the overwhelming preponderance of opinion in both branches: "in all the circumstances it may be considered that at present nothing further can be done with regard to amalgamating the two branches than to endeavour where required that the transition from one branch to the other shall be simplified and expedited as much as possible."

Professional Jurymen.

OF ALL matters discussed at The Law Society's Provincial Meeting, that which has aroused the most general interest is Mr. J. W. PICKLES' suggestion that a class of professional jurymen be instituted. The gist of the suggestion made is that there should be a jury of five persons, each having had at least fifteen years' business experience and having been specially instructed in such matters as the law of evidence at some law school or institution. They would be retired from business and become professional jurymen at salaries provided by the State. Their verdict would be good, notwithstanding that one of the five dissented.

There are very few indeed who are prepared to maintain that the jury system as at present working under English law is an ideal method of ascertaining truth. Like many other systems, it has its merits and demerits. For centuries it has served as a rough and ready method of ascertaining the facts of a case, and to temper the achievements of trained lawyers by reflecting contemporary feelings and prejudices in the administration of justice.

The professional panel would certainly remove several of the more obvious demerits of the present system, but might it not itself at the same time contain the germs of greater evils? As things are at present, the defects of jurymen are the defects of the kith and kin of litigants; they can hardly be described as the defects of any particular class. The adoption of Mr. PICKLES' scheme would tend to arouse in litigants the distrust of a professional class, thus cultivating a lack of faith in and respect for the justice administered by our courts.

Feeble-minded Offenders.

JUDGE ATHERLEY JONES, K.C. had recently before him at the Central Criminal Court a man, found guilty by the jury of larceny, who was said by the medical officer of the gaol to be simple-minded and easily led, both mentally and physically somewhat feeble. The learned judge, in passing a sentence of imprisonment, said that it was amazing no special provision was made for such cases. He could do nothing but send him to prison, and probably he would come back again. With every desire to assist such cases it is not altogether easy to see what special provision could be made. The problem of mental deficiency is a very difficult one indeed, and even within the rather narrow limits we have set ourselves, is very expensive to solve. There are limits to what the public can afford in maintaining its non-effectives, though it has to be admitted that it is terribly costly to leave them at large and unhelped. Moreover, whatever amendment is made to extend the scope of the Mental Deficiency Acts—and such amendment there must be—there will always be border-line cases. A reasonable expedient to deal with existing convicts of the type before the learned judge—men who have been frequently convicted, and by reason of their shortcomings of mind and character are likely easily to fall or be led into further crime—would be to extend the provisions as to preventive detention of habitual criminals, and classify such persons in a way which would permit of the segregation of the feebler characters. The conditions of their detention should be made as easy as possible, but they should be required to earn their own keep to such extent as their powers allowed. Here, however, we come up against the very controversial question of prison labour. These problems of making provision for special categories of law breakers are immensely complicated, and it is perhaps not so amazing after all that the solution of this particular one has not yet been found.

Dispensing with Co-respondent.

An important point of divorce practice was settled by the learned President in *Gleed* v. *Gleed*, 71 Sol. J. 729. The point in question is concerned with the power of the court to give a petitioner leave to proceed without making the alleged adulterer a co-respondent. The principal power which the court has in the matter is now derived from s. 177 of the Judicature Act, 1925, which re-enacts s. 28 of the Matrimonial Causes Act, 1857. Section 177, *supra*, provides that: "(1) On a petition for divorce, presented by the husband praying for divorce, the petitioner or respondent, as the case may be, shall make the alleged adulterer a co-respondent unless he is excused by the Court on special grounds from so doing." The object of this provision is undoubtedly to prevent collusion, but in a proper case leave will be given to proceed without making the alleged adulterer a co-respondent. Thus such leave has been granted, where the alleged adulterer is domiciled abroad, and so is not subject to the jurisdiction of the court: *Baker* v. *Baker and Dwyer*, 1908, P. 257; or where the co-respondent has died *pendente lite*: *Walpole* v. *Walpole*, 1901, P. 86; or where the co-respondent is a foreign prince: *Statham* v. *Statham & Gaekwar of Baroda*, 1912, P. 92. All the above circumstances may be regarded as special grounds on which the court will grant a petitioner leave to proceed without making the alleged adulterer a co-respondent. The decision in *Gleed* v. *Gleed*, *supra*, affords another illustration of "special grounds." The material facts in this case were that the petitioner, who sued as a poor person, received from the respondent a confession of adultery with one, M. The petitioner was not aware of the identity of M, and even if he was so aware, he would probably not have discovered his whereabouts owing to the long interval which had elapsed since the confession and the commencement of proceedings, the delay in this respect being occasioned through the position of the petitioner and his ignorance of the facilities afforded by the Poor Persons Department, and through no fault of his own. At the time the application was made to dispense with making M a co-respondent, M was believed to be somewhere in Australia, but it was not even known in which of the Australian States M was supposed to be, so that an order for substituted service by advertisement in this country or in Australia would not only have been costly but also more likely than not to be of no avail. The learned President accordingly granted leave to proceed without naming M as co-respondent, being of opinion that it would be a denial of justice, in the circumstances, to insist on the usual procedure, adding that the precautionary provisions in the above section were not intended to prevent or impede the administration of justice but to secure a proper observance of the law as to collusion and other matters.

Right to Serve Sentence.

Perhaps the most impudent argument that has ever been put forward upon an appeal was recently made use of in the case of *Kelley* v. *Oregon* in the United States. Kelley was a prisoner in the state penitentiary. In an attempt to escape, he slew a warder, was tried for murder and convicted, and sentenced to death. After exhausting his appeals in the state courts he took one to the Supreme Court on an assignment of error that, since he was already in process of serving a term of twenty years' imprisonment, he could not legally be executed until this term had expired. His contention rested on an Oregon statute prohibiting concurrent sentences, no sentence of imprisonment on a later conviction to commence before the expiry of that to be suffered for an earlier one. As the Chief Justice pointed out, Kelley was, in effect, claiming that a sentence of imprisonment was not only a punishment, but a licence to commit as many murders as he liked during its currency or during his life if that should be shorter than his term of imprisonment. Of course, if he lived, the capital punishment could be carried out at the end of his imprisonment—a remote contingency, which would be of little deterrence. It is satisfactory to read that the conclusion of the court was that "the penitentiary is no sanctuary, and life in it does not confer immunity from capital punishment provided by law."

Broadcasting and Copyright.

It is difficult to see how Mr. Justice McCardie could have arrived at any other conclusion in *Messager* v. *British Broadcasting Co., Ltd.*, 1927, W.N. 243, than that broadcasting might amount to a breach of copyright. It appears that the plaintiff was the composer of an opera, and that in March, 1905, he had granted to George Edwardes, whose rights therein became subsequently vested in George Edwardes (Daly's Theatre), Ltd., the sole and exclusive right of performing the opera in the United Kingdom, America and the British Empire. This company subsequently purported to license the defendants, the British Broadcasting Co., Ltd., to perform the opera, which the defendants broadcasted in the usual way. The plaintiff thereupon claimed an injunction to restrain the defendants from broadcasting the opera, which he contended was an infringement of copyright.

Two points appear to have been in issue, viz.: (1) whether the plaintiff was to be regarded as having transferred to George Edwardes the broadcasting rights in the opera; and (2) whether broadcasting can be an infringement of copyright. To deal with the latter question first, "copyright" is defined in s. 1 (2) of the Copyright Act, 1911, as, *inter alia*, "the sole right to produce or reproduce the work or any substantial part thereof in any material form whatsoever, to perform . . . the work or any substantial part thereof *in public*." The question therefore turned on whether broadcasting amounts to a *performance in public*. As Mr. Justice McCardie observed: "The defendants, though not admitting the public into their studio when broadcasting, clearly gave a public performance. They set in motion certain ether waves knowing that millions of receiving instruments in houses and flats were tuned to those waves, and knew and intended that acoustic representation of the opera would thereby be given to an enormous number of listeners." These words seem to us to contain the gist of the contention that broadcasting is a public performance and so may constitute an infringement of copyright.

What is the meaning to be given to similar expressions when contained in a contract made between individual parties? It is scarcely conceivable in the days prior to broadcasting, that where an author or composer granted to another person the sole right of performing his work in public, that the performance of the work by broadcasting should have been in the contemplation of the parties, and if the parties did not intend to contract on that basis, it is difficult to read into the contract a term which would give the grantee of the copyright the right to broadcast.

However that may be, it will usually be impossible to read such a term into the contract, because the right of public performance will generally be confined to certain countries, as in *Messager's Case*, where the right extended only to the United Kingdom, America and the British Empire. Inasmuch as by broadcasting there must necessarily be a performance all over the world, for those who care to listen in, it is submitted that a contract which purports to grant a person the right to perform a work in certain specified places cannot be read as including a right to broadcast. A nice question, however, might arise if the broadcasting could be and was intended to be limited to such places to which the right to perform the work in public extended. Mr. Justice McCardie, however, in granting the injunction in *Messager's Case*, held that the rights which were transferred did not include the right to broadcast.

Inconspicuous Conditions in Printed Contracts.

THE validity of small print has usually been discussed in the "ticket" cases—those relating to contracts of carriage or bailment. Recent decisions of the Court of Appeal show that these are an unsafe guide in dealing with other varieties of commercial documents.

In *Koskas* v. *Standard Marine Insurance Co., Ltd.*, 1927, 43 T.L.R. 169, a claim was made under a certificate of insurance in respect of leather damaged by salt water on arrival at Tunis. One of the grounds of defence was that Koskas had not complied with the following clause: "In case of loss or damage to the property hereby insured the loss shall be reported to the representative of the company, or, if there is no representative of the company, to Lloyds' agent, as soon as the goods are landed or the loss is known or expected." Without deciding whether this was a condition precedent, Mr. Justice SANKEY stated that he was satisfied that Koskas did not in fact know of the condition. In view of the fact that it was in the smallest possible print—much smaller than the other parts of the certificate—the learned judge held that it was not a clause which a reasonable man, on reading the document with reasonable care, would regard as forming part of the contract. Judgment was therefore given against the company for the sterling equivalent of 60,000 francs.

The Court of Appeal affirmed this decision on a different ground (viz., that notice of the damage was not a condition precedent), but disagreed with the judge below on the question of the small print. Lord Justice BANKES thought that the printing was sufficiently clear and intelligible to bind both parties. Lord Justice SCRUTTON disagreed with the doctrine that one could get out of a clause by saying that one could not read it. Lord Justice ATKIN agreed with the other members of the court on the question of illegibility.

In *J. Gordon Alison & Co., Ltd.* v. *Wallsend Shipway and Engineering Co., Ltd.*, 1927, 43 T.L.R. 323, the claim was in respect of damage suffered by delay in replacing a defective cylinder for the engines of a steamer. The Wallsend Company had written quoting a price, and stating the time of delivery, but at the head of the letter was printed: "All offers are subject to our usual strike and guarantee clauses, accidents, etc." One of the grounds of defence therefore was that the Wallsend Company were not liable for loss caused by delay. For the Gordon Alison Company it was contended that the notice, though in red ink, was very small and inconspicuous, and therefore (1) it was not a sufficient notice that the contract was subject to the Wallsend Company's guarantee clause; (2) if it was a sufficient notice, there was a doubt whether the clause did exonerate the Wallsend Company from liability. Mr. Justice ROCHE held on point (1) that the notice in red type at the top of the Wallsend Company's offer was a sufficient notice that guarantee and strike clauses were to be incorporated. He nevertheless gave judgment for the Gordon Alison Company on point (2), as it was not clear which was the clause incorporated, and an ambiguous document is no defence.

The Court of Appeal upheld this decision. Lord Justice BANKES agreed that the notice in red type at the top of the Wallsend Company's offer was a notice of the existence of some usual strike and guarantee clauses, but he did not agree with their contention that there were any strike and guarantee clauses applicable to the case. Lord Justice SCRUTTON and Mr. Justice ROMER concurred.

Illegibility and its effect on mercantile contracts had been more fully discussed in *Roe* v. *R. A. Naylor, Ltd.*, 1917, 1 K.B. 712. Damages had been claimed for non-delivery of timber in the following circumstances: NAYLORS' traveller left a sold note with ROE, who glanced at it and saw that the quantities of timber were correct. ROE did not see in the margin (printed sideways and in small type) the following notice: "Goods are sold subject to their being on hand and at liberty when the order reaches the head office." When ROE's order reached the head office part of the timber he wanted had been sold; he therefore claimed £41 10s. for breach of contract. The county court judge found that no reasonable steps were taken to bring the condition to the notice of ROE, who never knew of its existence. Judgment was therefore given for the plaintiff ROE.

The Divisional Court ordered a new trial on the ground that the real question was whether the clause was so printed and placed that a reasonably careful business man could be held justified in saying that he had never seen it and could not have been expected to see it. Mr. Justice BAILHACHE stated the law as follows: When parties to a contract exchange bought and sold notes, or a vendor hands to a purchaser a sold note which is accepted as the contract, there is no duty on the seller to ask the buyer to read the note, or to call attention to the contents. If the buyer accepts the note and fails to read it, he does so at his own risk; he would be bound by the conditions even if he had not read them. To this rule there is an exception: if the sold note is misleading, the buyer would not be bound by the condition. The sold note may mislead either because its terms are ambiguous—reading equally well in two different ways; or because the condition was so placed that an ordinarily careful man would not expect to find it there—e.g., if a strike clause were inserted among a list of branch shops. Nor would the buyer be bound if the condition were printed in such small type as to be unreadable to a person of ordinary eyesight. Mr. Justice ATKIN (as he then was) agreed the question of fact to be: was the document in such a form that a reasonable man might and did fail to see that the particular clause formed part of the contract?

Different considerations arise when dealing with contracts of carriage. In *Rowntree* v. *Richardson, Spence & Co.*, 1894, A.C. 217, a steerage passenger claimed £100 for personal injuries received on a voyage from Philadelphia to Liverpool. On the face of her ticket conditions were printed in small type lettered (*a*) to (*i*). Among them was the following: "(*d*) The Company is not under any circumstances liable to an amount exceeding $100 for loss of or injury to the passenger or his luggage." The ticket was folded up when handed to the passenger, and if she had opened it she would have found some stamping in red ink across the conditions. Mr. Justice BRUCE left questions to the jury, which, with their answers, were as follows: (1) Did the plaintiff know that there was writing or printing on the ticket?—Yes; (2) Did she know that the writing or printing on the ticket contained conditions relating to the terms of the contract of carriage?—No; (3) Did the defendants do what was reasonably sufficient to give the Plaintiff notice of the conditions?—No. Judgment having been given for the passenger for £100, the company appealed. The House of Lords decided that (1) by taking the ticket the passenger was not bound by the conditions as a matter of law; (2) there were questions of fact to be decided; (3) the proper set of questions to be left to the jury were those set out above. There being ample evidence to support the jury's findings, the judgment was upheld.

A first-class passenger is not so well placed. In *Cooke* v. *Wilson, Sons & Co.*, 1915, 60 SOL. J. 121; 114 L.T. 268, damages were claimed for loss and injuries suffered on a voyage from Hull to Archangel. A ticket was issued headed "Wilson Line of Steamships. Passenger Contract," and on its face was printed a condition that the steamship company would not be responsible for any loss or damage to luggage, nor for personal injuries arising from any neglect of the master. The steamship company admitted that (1) their captain had not kept the course prescribed by the Admiralty for vessels crossing the North Sea; (2) their ship in consequence struck a mine and was blown up; (3) the passenger suffered exposure and shock, and lost her own and her husband's luggage;

(4) the neglect of their master was the cause. They nevertheless disputed liability in reliance on the condition on the ticket. Mr. Justice DARLING left to the jury questions (2) and (3), as laid down in *Rowntree* v. *Richardson* (above), and the jury answered (1) that the passenger was aware generally that there were conditions, but not that they were printed on the ticket; (2) No. Judgment was therefore entered for the plaintiff for the amount of damages assessed by the jury.

The Court of Appeal set aside this verdict and judgment, and in view of the evidence they did not order a new trial, but entered judgment for the defendant company. The passenger was the wife of the Commercial Attaché to the British Embassy in Petrograd, and she had read enough of her ticket to be able to point out to a steward that it gave the name of the ship as "Eskimo" instead of "Runo." Lord Justice PHILLIMORE stated that the ticket was not described as a receipt, and that the passenger ought to have seen the conditions, which were set out in plain legible type. It was impossible to lay down that shipping companies were bound to provide for people who would not read what was put in front of them. Lord Justice PICKFORD held on the facts that sufficient and proper means were taken to bring the conditions to the notice of the passenger. Mr. Justice NEVILLE regretted the apparent result of the cases (viz., that the degree of notice necessary depends upon the degree of capacity of the recipient), but he agreed that judgment should be entered for the defendant company.

A railway passenger was more fortunate in *Stephen* v. *International Sleeping Car Co., Ltd.*, 19 T.L.R. 621. The company there contended that it was only necessary to prove notice when the conditions was printed on the back. The facts in the case were as follows: Sir Herbert Stephen sued in the county court for the price of a supplementary sleeping-car ticket from Calais to Monte Carlo. The sleeping-car broke down at Avignon, and the journey was completed in an ordinary coach. The company paid into court the proportion of the fare attributable to the distance from Avignon to Monte Carlo not travelled over. They relied on a condition that, if the car in which the berth had been taken should not be able to reach its destination, only such proportion of the fare should be returned as corresponded to the distance untravelled. This was printed on the front of the voucher, together with twenty-two advertisements, the whole being headed "*Avis important.*" On the back were twenty-three other advertisements. The county court judge answered in the passenger's favour the three questions approved by the House of Lords in *Rowntree* v. *Richardson* above, and gave judgment against the company for the full price of the ticket. The Divisional Court upheld this decision. Lord ALVERSTONE laid down that the suggested distinction between the front and the back of the ticket was not conclusive. When there was a contest as to whether the conditions were known, it was not sufficient to show that they were printed in a mass of other matter. Mr. Justice WILLS and Mr. Justice CHANNELL concurred.

Cloak room tickets are in an intermediate class, but are governed by the same principles as contracts of carriage, the questions for the jury being the same. (See *Parker* v. *South Eastern Railway*, 2 C.P.D. 416.)

The cases show that the rule *caveat emptor* still applies to the buyer of goods, but that the courts are more solicitous in their dealings with the buyer of an intangible commodity such as transport.

R. W. FRAZIER.

Sewers and Drains.

By ALEXANDER MACMORRAN, M.A., K.C.

(*Continued from page* 739.)

III.

Section 13 of the Public Health Act, 1875, provides that all existing and future sewers within the district of a local authority, together with all buildings, works, materials and things belonging thereto, with certain exceptions, shall vest in and be under the control of such local authority. The exceptions call for special consideration, but for the present it is desired to call attention to the vesting of the sewers as provided by the section. Now the word "vest" has been the subject of many decisions under this and other sections of the Public Health Act, notably in the case of highways repairable by the inhabitants at large which are vested in the local authority by s. 149. The effect of these decisions in regard to a street may be stated in the words of Lord HERSCHELL in *Tunbridge Wells Corporation* v. *Baird*, 1896, A.C. 434, where he said:—"The soil of a street is vested only so far as is necessary for the control, protection and maintenance of a street as a highway for public use." In the case of *Rolls* v. *The Vestry of St. George the Martyr, Southwark*, 14 Ch. D., at p. 795, JAMES, L.J., referring to a previous case, said:—"What that case decided, and all that it was necessary to decide in that case, was that something more than an easement passed to the local board and that they had some right of property in and on and in respect of the soil which would enable them as owners to bring a possessory action against trespassers. Now what was that 'something more'? It is impossible to read any of the three judgments without seeing that, in the view of the learned judges, the soil and freehold in the ordinary sense of the words, that is to say, the soil from the centre of the earth up to an unlimited extent into space, did not pass, and that no stratum or portion of the soil defined or ascertainable like a vein of coal, or stratum of ironstone, or anything of that kind, passed, but that the board had only the surface, and with the surface such right below the surface as was essential to the maintenance and occupation and exclusive possession of the street and the making and maintaining the street for the use of the public. In the case under consideration, what had been a street had ceased to be a street, and the question arose as to the ownership of what had formerly been a street. The importance of the case for purposes of these notes consists in what was said by the same learned judge with regard to sewers. He said:—"It appears to me that when the thing has ceased to be a highway, when it has ceased to be a street, then it ceases to be vested, because the period for which it was to be vested in the board has come to an end. I may give as an illustration the clause to which we have been referred on both sides, as throwing light on the case—the clause with regard to sewers. It appears to me that it would be a very strong thing indeed to say that because the sewer, the cylinder of iron or brickwork which is put in the ground for the passage of the sewage, with the enclosed space, is vested in the public body, then if the system of sewage is entirely diverted and new sewers made, and the materials taken up and the earthwork filled in, there would still be vested in the public body a right of freehold, a right and estate in perpetuity in that portion of the earth, wherever you could ascertain it, which had been at some time or other occupied by the sewer, although every trace of a sewer had been obliterated and the space filled up. That would be a very unreasonable interpretation, and I take it the same rule of interpretation is applicable to the case of a highway as to that of a sewer." It will be seen, therefore, that the vesting of a sewer in a local authority, though it does give some proprietary right to the authority, does not convey the freehold as that would ordinarily be understood, and that in fact no greater proprietary right is conferred on a local authority than is necessary for them to execute their statutory powers and duties with regard to it. These statutory powers and duties

are of two kinds: In the first place they have a right of access. That right was said to be only such as was reasonably necessary for enabling the repair of the sewer to be done (see *Birkenhead, Mayor of,* v. *L. & N.W. Railway Co.*, 15 Q.B.D. 572). The other right which is conferred upon the local authority is that which is given to them by s. 26 of the Act of 1875, which makes it unlawful in an urban district to erect any building over any sewer of the urban authority without their written consent.

Passing now to the duty of the local authority in respect of sewers, s. 15 of the Public Health Act, 1875, provides that every local authority shall keep in repair all sewers belonging to them, and shall cause to be made such sewers as may be necessary or effectual for draining the district for purposes of the Act. It was sought at one time to enforce the duty of providing sufficient sewers by mandamus, but it is now settled law that this is not an available remedy, the only remedy being that provided by s. 299 of the Act itself. That section provides that where complaint is made to the Local Government Board (now the Ministry of Health) that a local authority has made default in providing their district with sufficient sewers or in the maintenance of existing sewers, the Minister may, if satisfied after due enquiry that the authority has been guilty of the alleged default, make an order limiting a time for the performance of that duty in the matter of such complaint. And the section goes on to provide how the order is to be enforced. The reason why the duty prescribed by s. 15 cannot be enforced in the ordinary way by legal proceedings is thus stated by Lord Halsbury, L.C., in *Pasmore* v. *Oswaldtwistle U.D.C.*, 1898, A.C., at p. 394. He said: "The principle, that where a specific remedy is given by a statute it thereby deprives the person who insists upon a remedy of any other form of remedy than that given by the statute, is one which is very familiar and which runs through the law. I think Lord Tenterden accurately states that principle in the case of *Doe* v. *Bridges*, 1 B. & Ad. 859. He says: 'Where an act creates an obligation and enforces the performance in a specified manner, we take it to be a general rule that performance cannot be enforced in any other manner.'" The result is that where the remedy under s. 299 applies, no action for damages will lie at the suit of a private person complaining that he has suffered damage by reason of the failure on the part of the local authority to fulfil their statutory obligation to provide sufficient sewers. But the duty of a local authority is not limited to the provision of sewers. Section 19 provides that every local authority shall cause the sewers belonging to them to be constructed, covered, ventilated and kept so as not to be a nuisance or injurious to health, and to be properly cleansed and emptied. The duty thus created is not an absolute duty and consequently no action will lie for the failure to perform the duty in the absence of negligence on the part of the local authority. If, however, negligence is proved an action will lie against the local authority for failure to perform the statutory duty imposed by the section, whereby injury or damage has resulted (see *Baron* v. *Portslade R.D.C.*, 1900, 2 Q.B. 588).

In *Hammond* v. *St. Pancras Vestry*, 43 L.J., C.P. 157, Brett, J., said: "They (meaning the local authority) are bound to employ only reasonable care in keeping the sewers emptied and cleansed. The duty cast upon them is not absolute, and they are not bound to indemnify the plaintiff for an injury which has befallen him without their default. They are not liable unless they have been wanting in reasonable care and skill." This decision was followed in *Bateman* v. *Poplar District Board*, 37 Ch. D. 272. In that case a drain, which was originally a private drain, had, by reason of another drain being connected with it, become a sewer and therefore, by the Act, vested in the district board, and it was held that the board were not liable for a nuisance caused by the drain if it were shown that the connection was made illegally without the knowledge of the board, and that before action brought they did not know, and could not by the exercise of reasonable care discover, that the drain was a sewer. In the course of his judgment North, J., said: "It would be a strange thing if the section imposed on a district board a liability in respect of a sewer of the existence of which they had no knowledge or which they believed to be a drain. An obligation arises only when there is a duty, and even then only where there is knowledge of the duty."

It has been pointed out that under s. 13 of the Public Health Act, 1875, all existing and future sewers vest in and not under the control of the local authority, and it was mentioned that to this general statement there were certain exceptions. Of these exceptions it is only necessary to deal with the first, namely: Sewers made by any person for his own profit or by any company for the profit of the shareholders. The question whether a sewer in a particular case was made for profit has been the subject of much litigation. Some of the decided cases may be referred to. In *Acton L.B.* v. *Batten*, 28 Ch. D. 283, it was held that a sewer made by the owner of some only of the houses in the street not yet a highway, though made for the purpose of draining his own amongst other houses, was not a sewer made by a person for his own profit within the meaning of the exception. In the course of his judgment Kay, J., said: "If a sewer made for draining a street of houses would be considered a sewer for the profit of the person who made it because he connects some of his houses, all I can say is that almost every sewer in every street of every suburb of every town in England might be considered a sewer made for the profit of the person who constructed it. It is quite clear that is not the meaning of the Act." In *Ferrand* v. *Hallas Land & Building Company*, 1893, 2 Q.B. 135, it was held that a sewer made by a landowner for the sole purpose of draining houses erected by him on his own land was not made by him for his own profit within the meaning of the exception, and that consequently such a sewer vested in the local authority, In the course of his judgment, Lopes, L.J., said: "A sewer made for profit means, in my opinion, not a sewer made for the mere purpose of drainage, not a sewer made for the mere purpose of discharging matter not to be in any way utilised, but which it was essential to get rid of for sanitary purposes, but a sewer made for the purpose of realising a profit above and beyond, and independently of, any sanitary purpose." And A. L. Smith, L.J., added: "I am clearly of opinion that a sewer made merely for the purpose of draining premises and for no other purpose is not a sewer made for profit within the meaning of the exception."

The cases already mentioned were considered by Romer, J., in *Minchead L.B.* v. *Luttrell*, 1894, 2 Ch. 178. He held that sewers made by a landowner for the purpose of draining a town, the greater part of which stood on his lands, and for the use of which sewers he levied and was paid a sewer rate by all persons whose houses were connected with his sewers, were sewers made by him for his own profit within the meaning of the exception, and that consequently such sewers did not vest in the local authority. The ground of the decision was thus stated by the learned judge: "This is not a case where a landowner has put in sewers merely for the purpose of draining his own houses, looking to be compensated for his expenditure in the advantages that may accrue to his houses by having a proper system of drainage. This is a case where the defendant has laid out money for the purpose of making sewers, intending to be compensated and paid directly for his expenditure on the sewers by receiving payments from all persons, whether they are his tenants or not, who avail themselves of the benefit of his sewers, and where he intended to receive, and did receive, payment direct to him from the persons using his sewers for the benefit of his sewers, and where he has, by reason of his expenditure, received direct remuneration for the expenditure in the way I have indicated."

This case was distinguished by the same learned judge in a subsequent case of *Vowles* v. *Colmer*, 64 L.J.,

Ch. 414. It was there held that where a landowner is laying out a building estate and has constructed a sewer for the sole purposes of his own property with the intention of being recuperated for his outlay, although he makes a fixed charge for the condition to connect drains with the sewer, the sewer will nevertheless not be laid for his own profit within the meaning of the exception but will vest in the local authority. The learned judge pointed out that the contrary view would cause the exception to a great extent to eat up the general enactment. While, therefore, it would appear that the *Minchead Case* has never been questioned, the decision must be taken to be limited to the particular facts of that case.

In *Croysdale* v. *Sunbury U.D.C.*, 1898, 2 Ch. 515, a line of pipes laid down by the owner of a field adjoining a highway from a ditch bordering the highway to a disused gravel pit in the field for the purpose of supplying water to the cattle fed in the field, was a sewer made for profit. It was held that the word "profit" was not to be restricted to a direct money payment, and that a sewer not made for the ordinary drainage purposes, but to enable the land on which it was made to be occupied more profitably or to avoid an expenditure which would otherwise have to be incurred in order that the occupation might be equally beneficial, was made for the profit within the meaning of the section. STIRLING, J., said: "In the present case the field was not adequately supplied with water for the use of the cattle fed in it. The tenant, in order to avoid the expense of bringing water from some other source of supply, and to enable him to use the pond for feeding his cattle, made this line of pipes, and I think he did so for his own profit within the meaning of the section." This decision was approved by the Court of Appeal in *Sykes* v. *Sowerby U.D.C.*, 1900, 1 Q.B. 584. In that case a drain was made by the owner of a quarry for the purpose of collecting and carrying off surface water coming on to his land, and preventing it from running over the quarry. By means of the drain the quarry could be more economically and conveniently worked than if the water were allowed to spread over it. It was held that the sewer was made for profit, and did not vest in the local authority.

The general principle applicable in all such cases was thus stated by COLLINS, L.J.: "Where the drain is primarily used for the main purposes of the Act, sanitation and getting rid of faecal matter, that is within the Act, although, indirectly, it also brings about a benefit, which might be described as profit, to the person who uses it. But where a drain is made for the purpose of improving the land of the person who makes it—where that is the ordinary purpose of it—then I think that may be described as the direct object of making the drain and not as a secondary incidental result. I think that there may be a broad distinction between drains made for sanitary purposes and drains made for the mere beneficial occupation of land." In the course of the judgments it was pointed out that agricultural drains were not within the operation of s. 13.

The only other case which need be mentioned in this connection is that of the *West Riding of Yorkshire Rivers Board* v. *Linthwaite U.D.C.*, 79 J.P. 433. In that case a sewer was constructed by the owner of certain lands for the purpose of carrying into a river the trade effluent from a number of mills which were erected on the lands. A number of closets for use at the mills were subsequently connected with the sewer. It was held that the sewer having been originally built with the view of increasing the value of the land for manufacturing purposes, it was a sewer made for profit and did not vest in the local authority. It was held, moreover, that the fact that domestic sewage was carried from the closets did not have the effect of making it a sewer which vested in the sanitary authority. The judgments in the case last referred to appear to contain a valuable summary of the law on the subject under consideration.

A Conveyancer's Diary.

Land Held by Partners before 1926: Effect of the Vesting Provisions of the L.P.A., 1925.

Considerable doubt prevailed before 1926 as to the exact nature of a partner's beneficial interest where land was held by partners as part of their partnership property. Hence it is somewhat difficult to determine the effect, in certain cases, as respects partnership land, of the vesting and other provisions of the L.P.A., 1925.

It was frequently asserted by some that, whether the land was at law held in joint tenancy or under a tenancy in common, the beneficial or equitable interests of the partners were held in common. The suggestion was made by others that such interests were really vested in the partners as joint tenants but without the benefit of survivorship. See, generally, "Lindley on Partnership," 9th ed., p. 427.

It may be, however, that neither description gave the true position. The equitable interests of the partners could not be strictly said to be interests in the land at all. Their rights were to shares in the proceeds of the land as part of the partnership assets, after conversion into money and the payment of the partnership debts: see *Re Bourne*, 1906, 2 Ch. 427. It is agreed that if such was the position it was obviously an anomalous one. The partners in whom the legal estate in the land was vested would be in the position of trustees thereof for those who were beneficially entitled to the partnership assets. That clearly was the position when the conveyance had been taken of land bought with partnership money in the name of one of the partners. The position does not seem to have been different where the conveyance had been made to all the partners.

Further, though in some cases the partners holding the legal estate might be under a duty to sell—e.g., after the death of one of the partners: see *Re Bourne*, *supra*, at p. 431—they could hardly be said to be trustees for sale.

In these circumstances it is of interest and considerable practical importance to attempt to ascertain the effect of the vesting provisions of the L.P.A., 1925, in two typical cases:—

Case I. Where immediately before the commencement of the L.P.A., 1925, two or more partners held land comprised in the partnership property as tenants in common at law, then it seems fairly clear that Pt. IV of the 1st Sched. to the Act would apply to vest the property in the partners or in the Public Trustee (subject to his liability to be divested on appointment of new trustees) upon the statutory trusts. In that case the land was held at law in undivided shares vested in possession.

Case II. What is the position where at the commencement of the L.P.A., 1925, land was vested in all the partners as joint tenants as part of their partnership property? On the view that the partners were tenants in common in equity, the case would fall within 1st Sched., Pt. IV, para. 1—which sub-paragraph, it is difficult to say. If the court were to decide that they held as trustees for themselves as tenants in common, sub-para. (1) would apply, and the partners (however many there were, for there is no restriction as to numbers contained in sub-para. (1)) would hold on the statutory trusts. If, on the other hand, the court were to decide that the entirety of the land was vested absolutely and beneficially in the partners, sub-para. (2), or if there were more than four partners, sub-para. (4), would apply.

On the view that the partners were joint tenants in equity, s. 36 applied, the land being held on trust for sale *in like manner* as if the persons beneficially entitled were tenants in common, but not so as to sever the joint tenancy in equity. Presumably this means that the statutory trusts would be the same as those affecting land held in undivided shares

(without severance of the joint tenancy) *and* that *the trustees holding the legal estate* would be ascertainable according to the scheme worked out in Pt. IV of the 1st Sched.

Finally, if the view is correct that in equity the partners are neither tenants in common nor joint tenants of the land at all, but that they are merely as regards the legal estate, trustees of the land for partnership purposes, there seems to be no vesting provision applicable. In which case the legal estate in the land continues to be held by the partners simply as trustees.

Therefore (whichever view is adopted) in all cases except (1) where there were at the commencement of the L.P.A., 1925, more than four partners, or (2) there are incumbrances affecting the shares of one or more of the partners, the legal estate remains in the partners and they can make a good title. Where there were more than four partners or there are incumbrances affecting shares, it seems advisable as a precautionary measure that all the partners in exercise of all their powers should appoint not more than four of their number to be trustees, and thereby the land would become automatically or by implied vesting declaration vested in the new trustees, who would then be able to give a good title to a purchaser.

Pre-1926 Assents and Conveyances by Personal Representatives.

What is obviously a slip has occurred in the reply to *Q.* 946 in our "Points in Practice" column, where it is stated (in brackets) that "it is assumed that the circumstances are such that the assent of the administratrix would be implied under the doctrine of *Wise* v. *Whitburn*, 1924, 1 Ch. 460." Section 3 (1) of the L.T.A., 1897, provided that "at any time after the death of the owner of any land, his personal representatives [might] assent to any devise contained in his will or [might] convey the land to any person entitled thereto as heir, devisee, or otherwise . . ."; that is, before 1926 an administrator (as opposed to an executor) could only *convey*; he could not assent.

It may be pointed out that the substance of the reply is not affected by the slip mentioned; for, assuming that A's estate had been completely administered before 1926, the vesting provisions contained in Pt. II of the 1st Sched. to the L.P.A., 1925, operated to vest the legal estate in the heir (subject to the widow's dower).

Landlord and Tenant Notebook.

Measure of Damages for Breach of Repairing Covenants.

In considering the measure of damages where a repairing covenant is broken, a distinction is to be made between—

(1) A covenant to *put* in repair;
(2) A covenant to *keep* in repair;
and
(3) A covenant to *yield up* in repair.

Covenant to *put* in Repair.

A covenant to put in repair is not in the nature of a continuing covenant, and if such a covenant is broken, damages in respect of the breach can only be recovered once, and successive actions cannot be brought during the continuance of the term, and where such a covenant has been broken, an assignee of the lessee cannot be made liable: *Coward* v. *Gregory*, 1866, L.R. 2, C.P. 153, at pp. 169, 170, 171.

Although there is no authority, directly in point, as far as we are aware, it is submitted that the measure of damages for breach of a covenant to *put* in repair must be the cost of putting the premises into such repair.

Covenant to *keep* in Repair.

Where the covenant is to *keep* in repair, and the lessee fails to keep the premises in the state of repair agreed to between the parties, the breach will be of a continuing nature, in respect of which successive actions may be brought, though in any subsequent action allowance will have to be made by the lessor for any damages that he may previously have recovered.

The measure of damages recoverable *during the continuance of the term*, in respect of a breach of a covenant to keep in repair, would appear to have undergone substantial modifications since Lord Holt's time. In *Vivian* v. *Champion*, 1705, 2 Ld. Raym. 1125, Holt, C.J., held that the amount of damages that was recoverable was the cost of putting the premises in repair, and from the *dicta* of the learned Chief Justice in that case, it would appear that it was the recognised practice at that time to award damages on that basis. Thus, the learned Chief Justice said (*ib.*, at p. 1126): "We always enquire in these cases what it will cost to put the premises in repair, and give so much damages, and the plaintiff ought in justice to apply the damages to the repair of the premises."

Indeed, in *Marriott* v. *Cotton*, 1848, 2 C. & K. 553, Rolfe, B., was of opinion that in such a case the lessor could only recover nominal, but not substantial, damages, since otherwise he might pocket such damages, and then bring another action for non-repair and recover substantial damages and so on. As far as the ruling of Rolfe, B., however, is concerned, it appears from the records (cf., per O'Brien, J., in *Bell* v. *Hayden*, 1859, 9 Ir. C.L.R. 301, that this ruling was reversed on appeal and that substantial damages were awarded in that case.

The principle adopted by Holt, C.J., in *Vivian* v. *Champion*, if it was a principle which was universally followed in Lord Holt's day, appears to have undergone a profound change in modern times, and there can be no question that the modern principle as to the measure of damages, during the continuance of the term, for breach of a covenant to keep in repair, is the amount by which the marketable value of the reversion has diminished by reason of the non-repair. Thus, in *Henderson* v. *Thorn*, 1893, 2 Q.B., at p. 166, Wills, J., said: "The true measure of damages was not the sum required to put the premises into repair, but the loss to the landlord measured by the depreciation in the saleable value of the reversion. It is clear that this is the law as to the measure of damages where the action for breach of covenant to repair is brought during the currency of the term." But this rule would not appear to be an inflexible rule. Thus in *Joyner* v. *Weeks*, 1891, 2 Q.B., at pp. 35, 36, Wills, J., states that, where the lessor has reserved to himself a sufficient power of entry and has done the repairs, he might recover the cost thereof, and that where a measure of damages is fixed by the lessor's own liability to his superior landlord, this might be the measure of damages to be adopted as between the lessor and the lessee (cf., for example, *Ebbets* v. *Conquest*, 1895, 2 Ch. 377).

It is clear that a lessor generally will be entitled to recover substantial damages from the lessee for breach of a covenant to keep in repair, and that as the breach is a continuing breach, successive actions might be brought. On the other hand, it is quite clear, contrary to Rolfe, B.'s, opinion in *Marriott* v. *Cotton*, that, in a subsequent action, the lessor will have to make an allowance for the damages he may have recovered in a previous action, and *Henderson* v. *Thorn* is a useful case on this point. There the lessor had recovered substantial damages during the continuance of the term, for breach of a covenant to *keep* in repair, and at the end of the term brought an action for breach of the same covenant and also of a covenant to yield up in repair. The official referee assessed the damages by determining the sum required to put the premises into repair, subject to a deduction of the amount received by the lessor in the previous action, together with a sum for depreciation. On motion to set aside this judgment, it was held by the court that the money received in the first action must be taken to have been received as damages for injury to the reversion, and not as being the sum then required to put the premises into repair, and that the damages had been assessed upon the correct principle by the official referee.

On the question of the measure of damages for breach of a covenant to *keep* in repair, reference may also be usefully made to what Lord Herschell said in *Conquest* v. *Ebbets*, 1896, A.C., at p. 494. Lord Herschell, after pointing out that Lord Holt's statement of the law in *Vivian* v. *Champion* (referred to above) had been criticised in later cases, said: "I do not think any hard and fast rule can be laid down as to the damages which may be recovered by the covenantee during the currency of a lease in respect of the breach of a covenant to keep the demised premises in repair. All the circumstances of the case must be taken into consideration, and the damages must be assessed at such a sum as reasonably represents the damage which the covenantee has sustained by the breach of the covenant. I quite agree with the criticism to which Lord Holt's view has been subjected if that learned judge intended to lay down that, whatever the circumstances and however long the term had to run, the damages must necessarily be what it would cost to put the premises into repair. On the other hand I think it would be equally wrong to hold that this could never be the measure of damages, whatever the circumstances and however nearly the term had expired."

In this case accordingly, which was not the case of a direct lease with a freehold reversion, but an *underlease*, it was held that the immediate lessor's liability over to his landlord had to be taken into account, and that the cost of putting the property into repair at the end of the term might properly be considered for that purpose.

Covenant to *Yield up* in Repair.

Where an action is brought upon a covenant to *yield up* in repair, at the end of the term, the measure of damages will in general be the cost of putting the premises into repair, and not the amount by which the value of the reversion has been diminished.

The law on this point was thus laid down by Lord Esher, M.R., in *Joyner* v. *Weeks*, 1891, 2 Q.B. at p. 43, "When there is a lease with a covenant to leave the premises in repair at the end of the term, and such covenant is broken, the lessee must pay what the lessor proves to be a reasonable and proper amount for putting the premises into the state of repair in which they ought to have been left. It is not necessary in this case to say that this is an absolute rule applicable under all circumstances, but I confess that I strongly incline to think so . . . The rule that the measure of damages in such cases is the cost of repair, is, I think, at all events, the ordinary rule, which must apply, unless there be something which affects the condition of the property in such a manner as to affect the relation between the lessor and lessee in respect to it." And the lessor is entitled to recover a substantial amount of damages for breach of such a covenant, notwithstanding that he may not be suffering any actual damage at all. As Wills, J., pointed out in *Henderson* v. *Thorn*, 1893, 2 Q.B. at p. 167: "At the end of the term, no matter how indifferent it may be to the landlord whether his premises are in perfect order or not, yet if the repairing covenants are not performed, the landlord is entitled to recover the amount necessary to put them into repair." Thus the landlord has been awarded substantial damages, notwithstanding that the buildings in question were to be pulled down immediately after the end of the term (*Rawlings* v. *Morgan*, 1865, 18 C.B. N.S. 776), or were to be structurally altered in such a way as to render the repairs required by the covenant entirely valueless: *Inderwick* v. *Leech*, 1884, Cab. & E. 412.

Proposed Alterations in the Landlord and Tenant Bill.

Important alterations in this, among other branches of the law relating to landlord and tenant, it should be noted, are proposed to be made when the Landlord and Tenant Bill, at present before Parliament, is placed upon the Statute Book. Clause 17 which deals with the matter applies to all leases, underleases, agreements for leases, etc. (cl. 24), including leases, etc., of agricultural holdings, and it is framed to have a retrospective effect, though it will not, of course, apply to breaches which have taken place prior to the date of commencement of the Act.

Shortly, the effect of cl. 17 is to adopt one universal measure of damages in respect of both classes of repairing covenants, i.e., covenants to *keep*, as well as covenants to *yield up* in repair. In either case the measure of damages is *not to exceed* the amount, if any, by which the value of the reversion, whether immediate or not (so that the rule will also, apparently, apply to breaches of covenants contained in underleases) is diminished owing to the breach.

Clause 17 also proposes to do away with such decisions, which are hard upon the tenant, as *Rawlings* v. *Morgan* and *Inderwick* v. *Leech*, *supra*, by providing that a landlord will not be entitled to recover any damages for a breach of either covenant, where it is shown that the premises, in whatever state of repair they might be, would, at or shortly after the termination of the tenancy, be pulled down, or such structural alterations made therein as would render valueless the repairs covered by the covenant. At the same time the tenant will not be entitled to take advantage of the benefit of this provision if the necessity for pulling down or for the alterations is due *solely* to his neglect, act or default.

No mention, however, is made in the Bill of a covenant to *put* in repair, so that the measure of damages for breach of such a covenant, it is presumed, remains unchanged.

Reviews.

The Publications of the Selden Society. Vol. XLIII: For the year 1927. *The Liber Pauperum of Vacarius.* Edited by F. de Zulueta, D.C.L. London: Quaritch. clxv and 357 pp.

What an enormous amount of patient and scholarly labour Professor de Zulueta must have bestowed upon the 1927 volume of the Selden Series! The Regius Professor of Civil Law at Oxford has undoubtedly erected a worthy memorial to his Oxford predecessor—the first expositor of the civil law in England.

Magister Vacarius—a Lombard civilian—was imported into England between 1144 and 1149 by Archbishop Theobald as a teacher, and, maybe, practitioner, of the civil law. He taught probably at Canterbury and almost certainly at Oxford with considerable success, notwithstanding opposition from the King and the great men of the realm. At the request of his poor scholars he composed a work in nine books "excerpted from the Code and Digest," which became the recognised text-book for English students of the civil law. That work—or, more accurately, the various manuscripts in which that work is now found—forms the subject of this volume.

The Introduction gives an account of the life of Vacarius and of the various extant manuscripts of his *Liber Pauperum*. It also contains, amongst other things, a discussion upon the *Vacarian Gloss*, together with notes on the glosses to each of the nine books.

In the body of the volume is set out the *Liber Pauperum* itself, with various explanatory notes, and there follow ten indices referring to titles of the *Corpus Juris* contributing to the text, to extracts from the Code and Digest, and to other authorities and influences.

Books Received.

The Bombay Law Journal. Vol. V. No. 4. September, 1927. G. M. Pandya, The Maneck Printing Press, Anand Nivas, Tribhuran-road, Bombay 4. Rs.1.8.0.

POINTS IN PRACTICE.

Questions from Registered Annual Subscribers are invited and will be answered by some of the most eminent authorities of the day. All questions should be addressed to—The Assistant Editor, "The Solicitors' Journal," 94-97, Fetter Lane, E.C.4, be typewritten on one side of paper only, and be in triplicate. Each copy to contain the name and address of the subscriber. To meet the convenience of Subscribers, in matters requiring urgent attention, answers will be forwarded by post if a stamped addressed envelope is enclosed.

LEASE OF COPYHOLD LAND—ENFRANCHISEMENT—MANORIAL INCIDENTS—EXTINGUISHMENT.

968. *Q.* We have considered your opinion given to *Q.* 967. We note, that it is given on the assumption that no customary manorial incidents are thrown on the lessee. In this manor, however, there are customary manorial incidents imposed on the lessee, and it would, therefore, appear that the lessee is liable to pay compensation. As the lady of the manor is also the reversioner please say who should be the parties to the compensation agreement, and whether you can direct us to any precedent. *Vide* the Manorial Incidents (Extinguishment) Rules, 1925, and the Schedule, Pt. I, para. 3 (4). How should the compensation money be apportioned ?

A. The latter part of the answer does in fact deal with the alternative actually existing, namely, the imposition of the burden of manorial incidents on the lessee. The questioners have not made it clear whether the lease was granted by a copyholder, whose interest was subsequently bought up by the lady of the manor (the assumption on which the former question was answered) or direct by the lady of the manor, according to custom. If the latter was the case, the L.P.A., 1922, s. 133 (1), applies—with, however, practically the same result, namely, that the tenant and lady of the manor can by agreement extinguish the manorial incidents as prescribed under s. 138.

SETTLED LAND—VESTING IN TENANT FOR LIFE—DELEGATION OF TRUSTS DURING ABSENCE ABROAD.

969. *Q.* Testator A died in 1911 having by his will appointed his wife B sole executrix. A devised a copyhold dwelling-house to his wife for her life and directed that on her decease the property should be sold and the proceeds of sale be divided amongst his children. The will contained no appointment of trustee. B now desires to sell the house. One of the children is still an infant and no admission of B on the Court Rolls has been made since A's death. Can B as personal representative or as trustee by implication appoint an additional trustee or trustees under the powers conferred by the T.A., 1925, and after executing a vesting deed vesting the property in herself sell as tenant for life ? The manorial incidents saved by the L.P.A, 1922, have not been redeemed. Further, B is going abroad. Can she give a power of attorney to someone to act for her under T.A., 1925, s. 25 ?

A. The legal estate in the enfranchised land vested in B as trustee-estate owner under L.P.A., 1925, 1st Sched., Pt. II, para. 3, without prejudice to any claim in respect of fines, fees and other customary payments. B, under S.L.A., 1925, s. 30 (3) is S.L.A. trustee of the settlement; she is, however, under an obligation (see *ibid*) to appoint an additional trustee to act with her. Both S.L.A. trustees will then execute a vesting deed declaring the property to be vested in B as tenant for life.

B can delegate her trust to another (not being the only other co-trustee who is not a trust corporation) during absence abroad: T.A., 1925, s. 25 (1). Trustee in that section includes a tenant for life: *ibid*, sub-s. (11). She will be liable for the acts and defaults of the donee exactly as if they were her own.

SECOND MORTGAGE EXECUTED BEFORE 1ST JANUARY, 1926—NO TRANSFER—PUT ON REGISTER—RELEASE.

970. *Q.* A, being seised in fee simple of certain lands in June, 1922, conveyed them in fee simple by way of mortgage to B, and passed over all the title deeds to him. In February, 1924, A executed a second mortgage of the same lands in fee simple in favour of a bank to secure an overdraft on his current account. The bank gave due notice of the second charge to the first mortgagee, B. In February, 1926, the bank registered their second mortgage in the Land Registry as Class C (1). There has been no transfer of the second mortgage. A is now selling off the lands in building plots, the first mortgagee and the bank joining in the conveyance of each plot and releasing the property sold in the usual way. It is probable that the bank were fully secured, and would not have lost priority even if they had not registered their second mortgage. Is it imperative that, on a sale of each plot, the register should be amended and bank's charge vacated so far as that plot is concerned ? If so, presumably it must be upon an application by the bank, at the expense of the vendor, and what forms are applicable ?

A. The effect of the registration is, under the L.P.A., 1925, s. 198, to give a purchaser notice of the mortgage. The effect of each conveyance of a plot being to release the charge and merge the term in respect of that plot, the notice thenceforth relates to an interest which the title shows to be satisfied. This being so, the opinion is here given that vacation of the registration is not imperative. But it may be convenient, and the machinery appears in the Land Charges Rules, W.N. 1925, 414, s. 10, see Forms L.C. 7 and 8. The bank on being paid off would no doubt take the appropriate steps for vacation by the request and at the cost of either vendor or purchaser.

SOLICITOR—PURCHASE OF LAND FROM CLIENT—PROCEDURE.

971. *Q.* S, a solicitor whose firm has sometimes acted as solicitor for A, has agreed to purchase from A and his wife, B, a block of six fields (about 22 acres) which the latter purchased three or four years ago, another solicitor acting on the purchase. S had an enquiry for a plot of land from someone who wished to put up a building, and thought one of the above fields (a corner field containing about 3 acres) would be suitable. S saw A, and asked if he would sell the corner field, and told him of the enquiry. A said he would not sell any field separately, but would sell the whole or none. As the enquirer would not consider buying the whole 22 acres, S then asked A if he would sell him, S, the six fields, and a price was ultimately agreed upon (a little more than A and B paid for the property) and an agreement was entered into that A should remain as tenant and S should be entitled to vacant possession of any portion of the land which might be required for building or other purposes. As S's firm sometimes acted as A's solicitor, should any special clause be inserted in the conveyance, as in para. 5, p. 466 of "Prideaux," Vol. I, or what (if anything) should be done to avoid A and B making an application to set aside the conveyance (which seems very improbable), or, to guard against any objection to the title by any subsequent purchaser of any part of the land for building or other purposes?

A. The questioners do not make it clear what estate A has in the land. Assuming, however, that S is the legal adviser of both A and B, an obvious suggestion would have been that, on any particular conveyance, A and B should have another adviser *pro hac vice*—only such conveyance would now be carried out as the result of the agreement mentioned, registrable, and no doubt registered by S as an estate contract under the L.C.A., 1925, s. 10 (1) class C (iv). It is not stated whether A and B were separately and independently advised on such agreement, but even if they were not, it would not necessarily be void, but, at most, voidable, unless certain

conditions were fulfilled, see *Wright* v. *Carter*, 1903, 1 Ch. 27, at p. 60, and *Demerara Bauxite Co.* v. *Hubbard*, 1923, A.C. 673. If S can prove these conditions were fulfilled the agreement is good. If they were not fulfilled, A and B can have it set aside, and probably they cannot deprive themselves of this right. There seems no reason, however, why a purchaser from S should have notice that he was solicitor to A and B, and, taking without notice of any claim by them, he would not be bound by their equity.

REGISTRATION OF LAND CHARGES—INTERESTS REGISTRABLE.

972. *Q.* I am acting for the vendor of certain land. The conveyance conveys the land to the purchaser excepting and reserving unto the vendor in fee simple—

(*a*) All mines and minerals, with power to work the same.

(*b*) All rights of fishing in the river passing through the land sold.

(*c*) Certain timber upon the land sold, with power for the vendor to enter and cut same.

I shall be glad to have your opinion as to whether any or all of the above-mentioned reservations should be registered as land charges under the L.C.A., 1925?

A. None of these interests fall within the category of registrable interests within the meaning of the L.C.A., 1925, s. 10.

SETTLED LAND—NO S.L.A. TRUSTEES—DEATH OF TENANT FOR LIFE ESTATE OWNER—REPRESENTATION.

973. *Q.* In the interesting note under the heading "A Conveyancer's Diary" in your issue of the 16th July, showing that the "difficulties" arising on the death of the owner of land subject to a family charge can be minimised by clearing off the S.L.A. trustees by renunciation or citation, thus enabling the general executors of the deceased owner to obtain a general grant including the settled land, no mention is made of the case where there are no S.L.A. trustees, in which case the difficulties are very real. In 1892 C disentailed the Blackacre Estate, which was subject to certain jointure rent-charges, and the trustees of the estate conveyed it to him in fee simple subject to the payment of the jointures. The trustees have all long since died. C died in 1917 having devised his real property to H in fee simple. In the year 1924 H was desirous of selling part of Blackacre free of the jointures but was advised that the powers of the S.L. Acts, 1882 to 1890, could not be successfully invoked because H was not and never had been a tenant for life. H therefore sold the land subject to the jointures, but with an indemnity against them, to M, who died in 1927, leaving a will. Under the S.L.A., 1925, s. 1, the land purchased by M became settled land and on his death vested in his special executors—i.e., the S.L.A. trustees of the Blackacre Estate, who do not exist, and it is not likely that new trustees will be appointed. The jointress is living and may be expected to live a long time and the rent-charges have been assigned, mortgaged and charged to such an extent that a release of the land is practically impossible. What are the persons interested under M's will to do?

A. On the assumption there are no S.L.A. trustees, the "difficulties" disclosed by this query seem to be of the same unreal nature as those referred to in the Conveyancer's Diary mentioned; for under A.E.A., 1925, s. 22 (1), a testator is only deemed to have appointed as his special executors in regard to settled land the persons, *if any*, who are at his death the trustees of the settlement thereof. There are none in the case mentioned, so that there is nothing to prevent a grant, not excluding settled land, to the general executors of M, who can under L.P. (Am.) A., 1926, convey a legal estate in the land.

DEATH DUTY—PERSONS ENTITLED TO INCOME EQUALLY—DEATH OF ONE—ESTATE DUTY—AGGREGATION.

974. *Q.* A died in June, 1923, having by his will bequeathed his residuary real and personal estate to his trustees, upon trust to pay the *income* thereof to B (his brother) and C (his brother's wife) in equal shares, and after the death of either in trust for the survivor. Estate duty was paid in full upon the death of A and legacy duty was also paid in full in respect of the whole of the residuary estate. In January, 1926, B died leaving C him surviving. The Commissioners of Inland Revenue now demand estate duty in respect of the life interest of B in one half share of the residuary estate, the total value of which is approximately £34,000. In assessing the rate of duty the Commissioners take the principal value of £34,000 for the purpose of fixing the rate of duty (11 per cent.) and then charge the duty upon B's half share of approximately £17,000. It should also be mentioned that an allowance at the rate of 30 per cent. has been made in respect of the death of B occurring within three years of the death of A, and further that in respect of agricultural property of the value of £545 the duty has been fixed at the rate of 9 per cent. Your opinion is requested as to whether the Commissioners are entitled to fix the rate of duty with reference to the principal value of the residuary estate (£34,000), or whether the principal value of B's half share (approximately £17,000) should be the determining factor in this respect. It will be noted that A and B were merely entitled to the *income*, the capital being vested in the trustees upon other trusts.

A. The benefit accruing or arising by the cesser of B's interest within the F.A., 1894, s. 2 (1) (*b*), is half the income of the joint residuary bequest. The Commissioners should therefore be asked to state why they value the property passing as if the whole income passed. The value of the residuary estate of A does not appear to be a relevant factor in finding the aggregate estate of B passing on the death of B, since in fact the whole residuary estate of A did not then pass.

SETTLED LAND—FUTURE TRUST FOR SALE—DEATH OF TENANT FOR LIFE—REPRESENTATION.

975. *Q.* We are acting for the two trustees of the will of J.H., who died in 1892, having devised certain property to two ladies for life, and the survivor for life. On the death of the survivor the will contained a trust for sale, and the proceeds were to be divided as mentioned in the will. Mrs. A, the surviving tenant for life, died in August, 1926, intestate, without a vesting deed having been executed, and a grant of letters of administration to her property was obtained by her son, who is one of the trustees of J.H.'s will. What ought to be done to enable the trustees of the will to carry out the trust for sale, and, divide the proceeds as directed by the will? So far as we can see, someone, preferably the trustees of the will, should obtain a grant of letters of administration of her estate, limited to the settled land, and as special personal representatives assent to the property vesting in themselves as trustees for sale.

A. It is assumed that when the L.P.A., 1925, came into operation Mrs. A, was the sole tenant for life. The legal estate in the settled land vested in her as estate owner—tenant for life, under L.P.A., 1925, 1st. Sched., Pt. II, paras. 3, 5, 6 (*c*). Administration in respect of the settled land has to be obtained, the persons entitled to such grant being the trustees of J.H.'s will who are S.L.A. trustees under S.L.A., 1925, s. 30 (1) (iv). When these trustees have obtained administration and have administrated the estate they will assent in writing to the vesting of the land in themselves as trustees for sale, and carry out the trusts of J.H.'s will.

ENFRANCHISED LAND—NO COPYHOLDER IN FEE 31ST DECEMBER, 1925—COVENANT BY EQUITABLE TENANT IN FEE SIMPLE TO SURRENDER TO MARRIAGE SETTLEMENT TRUSTEES—TITLE—FINES AND FEES.

976. *Q.* A, who was tenant on the court roll of certain copyhold property, died in 1885, having by will devised the same to his wife for life, and then to B absolutely. The wife was never admitted tenant on the court rolls of the manor, and died some years ago. On her death B, who is still living,

entered into possession but has not been admitted. On his marriage in 1893 he covenanted to surrender the property to C and D, the trustees of his marriage settlement, but it was never surrendered to them. On the death of C, E was appointed in 1920 a trustee of the settlement in the place of C. This appointment contains a vesting declaration of all property, subject to the trusts of the settlement, and capable of being vested by that declaration in D and E. D died this year and F was recently appointed trustee of the settlement along with E. The deed of appointment declares that the requisite vesting declaration shall be implied. There has been no admission of the trustees, and the last tenant on the court rolls was A. The appointment of trustees has now been produced to the steward of the manor as required by s. 129 of the L.P.A., 1922. Will you please say what fines and fees are properly payable before the steward endorses the deed under the Act ?

A. A relevant datum, which is not given, is whether B (or any other person) was entitled to enjoy the copyhold for life under his marriage settlement (subject to the previous life interest of A's wife), or whether (subject as above), the trustees held on trust for sale. On this point will depend the vesting under the transitional provision contained in the L.P.A., 1922, 12th Sched., para. (8) (*b*). If B took a life interest under the settlement the enfranchised land vested in him as tenant for life, and he must pay the fines and fees which would have been payable on admittance, the fines being recoverable from him as simple contract debts under s. 130 (5). If the trustees had a trust for sale, the property vested on 1st January, 1926, in D and E (see prov. (v) of the 12th Sched., subject to the doubt discussed in *Q.* 196, Vol. 70, as to its applicability) on trust for sale, and fines and fees would be payable accordingly. And, assuming fines and fees would have been payable on the admittance of F as trustee for sale, they are payable under s. 128 (2) on the appointment of F as trustee for sale, which operated as a vesting declaration under the T.A., 1925, s. 40 (1) (*b*).

COVENANT AS TO REPAIR OF ROAD IN PURCHASE—ASSIGNEE'S LIABILITY.

977. *Q.* A is the owner of a freehold dwelling-house. The habendum to the conveyance of her predecessors in title contained the following : "And subject also to the obligation of paying and contributing a reasonable proportion of the costs and expenses of supporting and repairing the said private road and any extension thereof together with the pavements and footpaths thereof and all gutters and drains under or along the said road which are or may be capable of being used in connection with the said premises hereby assured or any part thereof until the same shall be adopted by the local authority." The conveyance contained the following covenant : "That the purchaser will perform the obligations as to the payment or contribution of costs and expenses in relation to roads and other matters . . ." A, by her purchase deed, bought the property ". . . subject to the obligations and restrictive and other covenants and conditions contained in the said indenture of conveyance . . ." and also entered into the following covenant : "A with the object of affording to the vendor etc. a full and sufficient indemnity but not further or otherwise hereby covenants with the vendor that the purchaser etc. will henceforth observe and perform the obligations covenants and conditions now binding on the vendor contained in the said indenture of conveyance." The *owner of the road* has now served A with notice that all plans of all necessary roads, works, footpaths, kerbing and channelling as required by the council have now been completed, and the contractor has submitted estimates for carrying out the work, the portion payable by you under the terms of your conveyance of your property is £——. You will observe that the covenant is to support and repair until the same shall be adopted by the local authority. Is A under any obligation to pay for the making up of the roads before taken over by the local authority ?

A. A covenant involving the expenditure of money does not run with the land, as laid down in *Austerberry* v. *Oldham Corporation*, 1885, 29 C.D. 750, and other similar authorities. Nevertheless A will be liable to indemnify her vendor, the covenantor, if the latter is sued in respect thereof. The covenant appears to relate to the structure of an existing road with the somewhat vague liability as to "any extension thereof," the effect of which could hardly be estimated without sight of the deed as a whole. Unless it covers the proposed making up of the road, the covenant hardly seems wide enough to include it. But so far as A's property has a frontage to the road, the local authority may be able to compel payment under the P.H.A., 1875, s. 150.

PRIORITY NOTICE—REGISTRATION OF LAND CHARGE—RESTRICTIVE COVENANTS—CONVEYANCE AND FIRST MORTGAGE ANTE-DATED—REGISTRATION AFTER NOMINAL DATES—EFFECT.

978. *Q.* At a recent sale of land subject to restrictive covenants, the respective dates of the various transactions were as follows :—

13th May	1927	Priority notice forwarded to Land Registry.
14th ,,	1927	Priority notice received at Land Registry.
27th ,,	1927	Second priority notice forwarded, consequent on transaction not having been completed within the fourteen days, and the first notice having apparently run out.
27th ,,	1927	Conveyance dated this date.
28th ,,	1927	First mortgage dated this date.
28th ,,	1927	Second priority notice received at Land Registry.
30th ,,	1927	Second mortgage dated this date.
30th ,,	1927	Actual date of completion of conveyance and mortgages.
31st ,,	1927	Land Charge Form L.C.4 sent in respect of the two priority notices. Registry, however, refused to recognise first priority notice. The charge was accordingly registered in respect of the second priority notice.

It will be observed that (as is often done) the conveyance was ante-dated, to suit the purchaser, so that the first and second mortgages could be dated a day and two days later respectively. In so doing the possible effect upon the priority notices and Form L.C.4 was overlooked. The result is (1) the conveyance bears a date one day earlier than the registration certificate of the second priority notice, and (2) the first mortgage the same date as the second priority notice. In the circumstances are the vendors (the persons in whose favour the registration was effected) sufficiently protected as against both the purchaser and the mortgagees ?

A. A purchaser is personally bound by his own covenants, whether they are registered or not, and anyone purchasing from the purchaser in this case after 28th May is also bound in the ordinary way by the registration. The question remains as to the mortgagee and purchasers from him under his power of sale—for, although they might be bound by the registration, it would be open to him to argue that that would in effect be binding him, since it would lower the price he could obtain and prejudice him (see "A Conveyancer's Diary," vol. 70, pp. 577-8). The priority notice forwarded on the 27th was received on the 28th, and its effect is regulated by the L.P. (Am.) A., 1926, s. 4 (1) (*b*), and the L.C. Rules, 1926, r. 1 (1) or (2) (see vol. 70, p. 803) according as the notice was received during or before office hours on 28th May. If necessary information as to the hour the notice was received could no doubt be obtained by enquiry at the Registry. The date of a deed, however, is that of its delivery, and parties to a deed are not estopped, at least as against each other, from proving that delivery took place

at some date other than that on the face of the document; see cases collected, "Halsbury's Laws," vol. X, p. 382, para. 685. The mortgagees being merely assigns from the purchaser, the vendor could therefore prove as against them that the purchase took place on 30th May, and that therefore the mortgagees could not have acquired a legal estate in the land before that date from a person who only took on that date. On this footing, the mortgagees are bound by the registration, taking after it had become effective, and *à fortiori* purchasers from them. The vendors should therefore be sufficiently protected.

Undivided Shares—Sale—Covenants for Title.

979. *Q.* There appears to be a diversity of opinion between the editors of "Key & Elphinstone" and "Prideaux's Precedents" as to the implied covenant to be given on a sale by joint tenants or tenants in common, who are also beneficially entitled. In the precedents in "Prideaux," Vol. I, 22nd ed., pp. 547-551, the vendors are expressed to convey as "beneficial owners." In the precedents in "Key and Elphinstone, 12th ed., Vol. I, Pt. I, pp. 576-577, there is a recital that, previous to the new Act, the vendors were entitled "beneficially" but they are expressed to convey "as trustees." As the property is held by the vendors on the statutory trusts, "Key & Elphinstone's" form appears to the writer to be more correct, but, at the same time, in the interests of a purchaser, it seems desirable that covenants for title should be implied in such a conveyance. Is there any objection to the vendors conveying "as trustees" and also "for the purpose only of implying covenants for title as beneficial owners," or will the use of the latter words place upon the purchaser any obligation or necessity for enquiry into the equitable title which could have been avoided if the conveyance were made by the vendors as trustees only?

A. If the questioner will refer back to *Q.* 422, p. 889, Vol. 70, and *Q.* 654, p. 101, *ante*, he will find that his problem has been previously raised and discussed in these columns, and his own view as to the correct procedure anticipated. Possibly he may find the ingenious form suggested in para. (2) of *Q.* 654 of assistance. A purchaser will in no case be concerned with the equitable title. See T.A., 1925, ss. 13, 14.

Arbitration—Submission—Matters Covered.

980. *Q.* A contracted to build a house for B, and it was of the essence of the contract that the house should be completed by a certain date, and it was agreed in the contract that all matters in dispute should be referred to a named arbitrator. The contract further provided that in the event of non-completion on the appointed date, A would pay as liquidated damages £3 per week until the property was completed. The property was not completed by the appointed date, and B contends that it has not been built in accordance with specifications contained in the contract. The parties consequently by written agreement agreed to refer their disputes and differences to the arbitrator appointed by the contract. The agreement to refer after reciting (1) that disputes and differences are now depending between the parties respecting the buildings and other erections contracted to be erected and *as to other matters* connected with the said contract and the rights and obligations of the parties thereunder, (2) that the parties have agreed to refer the said matters to arbitration, stipulates that all matters in difference between the parties arising out of or relating to the said contract or the subject-matter thereof or as to the rights duties or liabilities of either of the said parties in connection with the premises be referred to the award and final determination of the architect appointed by the contract. At the hearing before the arbitrator B gave evidence of A's neglect and lack of diligence in carrying out the work and asked the arbitrator to award him the sum of £3 per week for a definite period. It was contended by A's advocate that the only matter in dispute was whether A had faithfully carried out the terms of the contract in regard to the specifications annexed to the contract and whether or not B was liable to A in the full sum provided in the contract as the price for the erection of the dwelling-house and furthermore that B could not claim at the hearing any liquidated damages for delay as no notice of intention to make this claim had been given to A before the hearing, and it was therefore not a matter in dispute. A contends that he should have received previous notice that a claim for liquidated damages was to be made. B relies upon the provisions of the contract, and A's failure to comply therewith and also to the wording above contained in the first recital to the agreement to refer, and B asked the arbitrator to take this claim into consideration. Whose contention is right, and can you give any authority?

A. The case of *Charleton & Watson* v. *Spencer*, 1842, 3 Q.B. 693, is express authority that a submission, with a recital as to a particular dispute, containing an agreement to refer all disputes, was not limited in scope to the particular dispute and matters arising under it. On this authority, B's contention appears to prevail. See also *Re Hohenzollern Actien-Gesellschaft, etc.*, 1886, 54 L.T. 596. If a claim is within the submission, notice of it to the other party is not a necessary condition precedent to making it, though if given without notice an arbitrator might be justified in allowing the other party proper time to meet it.

Restrictive Covenant Affecting Parsonage.

981. *Q.* O is the owner of a valuable piece of freehold land situate at the rear of a vicarage. He desires to give this land for the augmentation of the benefice on condition that a window at the side of the vicarage which overlooks his private residence should be walled up, and that *an agreement* should be entered into providing that a window shall not be opened on that side of the vicarage in the future. The Vicar agrees to this, but states that such an agreement if entered into by himself would only be binding so long as he remained the incumbent. It *would not bind his successors*. The Ecclesiastical Commissioners agree to the proposal, but state that they have no power to enter into such an agreement so as to bind future incumbents of the benefice. In what way can such an agreement be *made binding* upon the present incumbent, and *also upon all future incumbents of the benefice*?

A. Concurrence must be expressed with the views of the advisers to the Ecclesiastical Commissioners and of the Vicar. In effect, the transaction would be the exchange of land a probably suitable for glebe, in return for the cession of valuable right in the vicarage house, namely the right to maintain and place a window or windows in a particular wall, and, possibly, a prescriptive right of light. The vicarage would be bound by restrictive covenants in return for value received. The only way in which incumbents can permanently deal with parsonage houses, however, appears to be under the Parsonage Act, 1838, s. 7 (giving power to sell with the consent of the Bishop and patron) which hardly seems applicable. In one sense a parsonage is vested in the incumbent as trustee for himself and his successors as an ecclesiastical trust, and so might possibly be brought within the S.L.A., 1925, s. 29 (1), in which case the transaction might be authorised by s. 38 (i) or (iii). In the absence of decision, however, the questioner cannot be advised that this view is safe. In the circumstances the suggestion is made that O might possibly settle it, by a deed conforming with the law of perpetuities, on the incumbent, for the time being, so long as no window of the vicarage overlooked his private residence, with reverter to himself on condition broken. Perhaps this would practically effect the object, but if the succeeding vicar chose to repudiate it, probably the present incumbent or his representatives would be liable to restore the window. And it need hardly be added that such a deed would require considerable care and skill in settling.

Privy Council.

Attorney-General of British Columbia *v.* **Canadian Pacific Railway Company.** 18th July.

BRITISH COLUMBIA—TAXATION—FUEL-OIL TAX—WHETHER DIRECT OR INDIRECT—*Ultra Vires*—BRITISH NORTH AMERICA ACT, 1867, s. 92.

By the British Columbia Fuel-Oil Tax, 1923, *it was provided that every person who purchased fuel-oil sold for the first time after its manufacture in or importation into the Province should pay a tax on every gallon of oil so purchased.*

Held, that the Act was invalid as being indirect taxation prohibited by the British North America Act, 1867.

The question in this case was concerned with the validity of the British Columbia Fuel-Oil Tax, 1923, and especially with ss. 3 and 6 of that Act. The purpose was to enact that every person who purchased fuel-oil within the Province should pay a tax of so much a gallon. It was contended for the respondents that under s. 92 of the British North America Act, 1867, there was no power in the Provincial Legislature to pass the statute, the ground being that the taxation was not direct. The cardinal question was whether the tax was direct or indirect within the meaning of the expressions used in ss. 91 and 92 of the Act of 1867. The trial judge held that the tax was *ultra vires*, and his judgment was affirmed by the Court of Appeal of British Columbia and by the Supreme Court of Canada.

Lord HALDANE, in delivering their lordships' judgment, said that in the case of *Attorney-General for Manitoba* v. *Attorney-General for Canada*, 1925, A.C. 561, the Board held invalid an Act to impose a tax on persons selling grain for future delivery, notwithstanding that the Act declared that the tax was a direct one. It was laid down by the Board that while a direct tax was one that was demanded from the very person who it was intended should pay it, an indirect tax was one which was demanded from one person with the intention that he should indemnify himself at the expense of another, as might be the case with Excise and Customs. A tax levied on brokers and agents and factors, as well as on sellers, obviously fell within the definition of indirect taxation. The meaning of the distinction had been settled by political economists whose definition had been adopted in earlier decisions. It was true that the question of the meaning of the words was one not of political economy but of law. Still, the legislation must have contemplated some tangible dividing line referable to the general tendencies of the tax and the common understanding of men. The definition of John Stuart Mill was accordingly taken as a fair basis for testing the character of the tax, not as a legal definition, but as embodying an understanding of the most obvious *indicia* of direct and indirect taxation. Validity in accordance with such tendencies must be the test. The question of validity could not be made to impose on the courts the duty of separating instances in which the tax might operate directly from those to which the general purview of the taxation applied. An exhaustive partition would be an impracticable task. Taking the principle so laid down as a guide to the solution of the question, the result did not seem doubtful. Fuel-oil was a marketable commodity, and those who purchased it, even for their own use, acquired the right to take it into the market. It therefore came within the general principle which determined that the tax was an indirect one. Other points were argued against the validity of the Act, but the conclusion at which their lordships had arrived rendered it unnecessary to discuss them. They agreed with the conclusion arrived at by all the courts below and would humbly advise His Majesty that the appeal be dismissed with costs.

COUNSEL: *Farris*, K.C. (of the Canadian Bar), and The Hon. *Geoffrey Lawrence*, K.C.; *W. N. Tilley*, K.C., *E. P. Davis*, K.C., and *J. E. McMullen* (all of the Canadian Bar).

SOLICITORS: *Gard, Lyell & Co.*; *Blake & Redden.*

[Reported by S. E. WILLIAMS, Esq., Barrister-at-Law.]

High Court—Chancery Division.

In re **Higgs and May's Contract.** Eve, J. 12th July.

VENDOR AND PURCHASER—TRUST FOR SALE AND DIVISION—UNDIVIDED SHARES—STATUTORY TRUSTS—LAW OF PROPERTY ACT, 1925, SCHED., PT. IV, PARA. 1 (3)—LAW OF PROPERTY (AMENDMENT) ACT, 1926, SCHED.

A testator directed that after the death of certain children his trustees should sell his estate and divide the proceeds equally among a class. The trustees sold the land, but the purchaser declined to accept the title on the ground that the land was vested in the tenants for life under para. 4 of the schedule of the Law of Property (Amendment) Act, 1926.

Held, that the land fell within para. 1 (3) of Pt. IV of Sched. 1 of the Law of Property Act, 1925, *and the trustees could make a good title.*

This was a vendor and purchaser summons taken out by the trustees of a will under s. 49 of the Law of Property Act, 1925, asking for a declaration that a good title had been shown. By his will, William Higgs directed that when and so soon as all his children should be dead except two, his trustees should sell and convert all his trust estate and divide the proceeds equally between his two surviving children, and the child or children of deceased sons and daughters, such last-mentioned children, if more than one, to take equally between them one equal share of the proceeds of sale. By a contract dated 2nd December, 1926, the applicants agreed to sell and the respondent agreed to purchase certain premises in Brixton forming part of the trust property. The respondent declined to accept the title and contended that the case came within para. 4 added by the schedule to the Law of Property Amendment Act, 1926, to para. 1 (3) of Pt. IV of Sched. 1 to the Act of 1925, and that the land was vested in the tenants for life, in whose favour a vesting deed ought to be executed by the applicants, and who alone could make a good title. The applicants contended that the land was vested in them as trustees in fee simple upon the statutory trusts referred to in para. 1 (3) of Pt. IV of Sched. 1 to the Law of Property Act, 1925, and that they could make a good title.

EVE, J., said the relevant facts were embodied in an agreed statement from which it appeared that on 31st December, 1925, the land to which this summons related was vested in the four applicants as trustees of the will of William Higgs, who died in 1883, upon trust to divide the income arising therefrom amongst eighteen persons, viz., ten children, seven grandchildren, and the legal personal representative of a deceased grandchild of the testator. On 1st January, 1926, therefore, the entirety of the land was settled land held under one and the same settlement in equity in undivided shares vested in possession and by virtue of para. 1 (3) of Pt. IV of Sched. 1 to the Law of Property Act, 1925, would appear on that date to have vested in the applicants as trustees of the settlement as joint tenants upon a statutory trust, and upon that assumption the contract of sale was entered into and title thereunder deduced. But the purchaser declined to accept the title and insisted that the case came within the new paragraph 4, added by the Amendment Act, 1926, to Pt. IV of the 1st Sched. to the Act of 1925, and that the land was vested in the tenants for life in whose favour a vesting deed ought to be executed and who alone could make out a good title. He could not accept that view. As there was nothing in the amending Act which repealed para. 1 (3), no construction ought readily to be imposed on the new paragraph which would

involve a conflict between the two. If possible they should be so construed as to be applicable to the particular cases to which each was directed, and so that they might neither conflict nor overlap. By the amending paragraph particular cases—those in which the settled land was so limited as to devolve as an undivided whole—were excepted from the operation of para. 1 (3) and that was all that was effected thereby. No doubt there must be some good reason for distinguishing that particular class of case, although for the moment he was unable to suggest what it was, but it was, he thought, abundantly clear that no case could properly be held to fall within the new paragraph unless it could be shown to possess the particular qualification therein indicated, and land settled upon trust for sale and division of the proceeds could not by any stretch of imagination be described with accuracy as land so limited as to devolve or descend as an undivided whole. Accordingly the land agreed to be sold fell within para. 1 (3), and the contention of the applicants was right. They were entitled to the declaration asked for.

COUNSEL: *Topham*, K.C., and *Fawcus*; *R. L. Ramsbotham*.
SOLICITORS: *Lewis & Sons*; *Kingsbury & Turner*.
[Reported by S. E. WILLIAMS, Esq., Barrister-at-Law.]

Probate, Divorce and Admiralty Division.

Fanshawe *v.* **Fanshawe.** Bateson, J. 16th and 18th May.

DIVORCE—ARREARS OF ALIMONY *pendente lite*—FAILURE TO OBEY ORDERS FOR COSTS—RESPONDENT'S FUND DUE FROM A THIRD PARTY—INJUNCTION—JUDICATURE (CONSOLIDATION) ACT, 1925, 15 & 16 Geo. 5, c. 49, s. 45.

Where there are arrears under orders for alimony pendente lite *and for costs, the court will restrain a respondent from dealing with his property to the extent of existing arrears, but not so as to secure sums payable in the future.*

This was a motion by a petitioner wife for, amongst other orders in the alternative, an injunction to restrain the respondent husband from parting with certain moneys except by paying them into court. On the 3rd February, 1927, the wife obtained a decree *nisi* of dissolution with custody of the child of the marriage. On the 31st January, 1927, the wife had obtained an order for alimony *pendente lite* at the rate of £180 per annum and for provision for the child at the rate of £55 per annum, payment to commence from the 8th November, 1926, and to be made monthly. On the 25th March, 1927, an order was made against the husband for payment of the wife's taxed costs of her petition, amounting to £73 9s. 2d. The husband failed to keep up the payments in respect of alimony *pendente lite* and to comply with the order for costs. The husband had been in the employment of a brewery company at a salary of £700 per annum and was the registered holder of fifty ordinary shares in the company. It was a term of the husband's employment that when he ceased to be employed he should transfer those shares to a nominee of the company, and should be entitled to receive payment for them at a price to be fixed by the company's auditors. In March, 1927, the husband left the company, and in accordance with the terms of his employment transferred the shares to a nominee. The value of the shares then became payable to the husband, subject to fixing the purchase price. The wife gave notice of motion (*a*) for an order restraining the husband from receiving any moneys now or hereafter to become payable to him in respect of the value of his shares in the brewery company and for an order that such moneys should be paid into court; (*b*) alternatively, for an injunction restraining the husband from parting with such moneys except by paying them into court; (*c*) alternatively, for an order (if payment of such moneys should already have been made to the husband) that he should forthwith bring the moneys into court; (*d*) alternatively, for the appointment of a receiver to receive such moneys. There were several adjournments. At the date of the final hearing of the motion the husband had in fact received the value of the shares, £347 6s. 4d., but the sum had been deposited in the joint names of the husband's and wife's solicitors, in accordance with the terms of an undertaking given by the husband at a previous adjourned hearing on the 28th March, 1927. From the evidence filed in support of the motion, it appeared that, in addition to the sum of £73 9s. 2d. under the order for costs, the husband was in default to the extent of £57 10s., being three monthly instalments of alimony *pendente lite*. Counsel for the wife submitted that the court had power under s. 45 of the Judicature (Consolidation) Act, 1925, to make such an order as was asked for on the motion. He referred to *Gillet* v. *Gillet*, 14 P.D. 158; *Bullus* v. *Bullus*, 102 L.T. 399; *Noakes* v. *Noakes*, 4 P.D. 60; *Jagger* v. *Jagger*, 1926, P. 96. Counsel for the husband submitted that the proper remedy for the wife would have been to issue execution. There was no case in which security had been ordered for payment under an order for alimony *pendente lite*. The court had no power to grant an injunction until a final order for permanent maintenance had been made: *Burmester* v. *Burmester*, 1913, P. 76. The husband, having lost his employment, had now no income, and it was improbable that an order for permanent maintenance would be made.

BATESON, J., after stating the facts, said: I am dealing with this case on the facts of the case itself only, which is an application for a restraint of dealing with property where the only order is an order for alimony *pendente lite*. It is quite clear, I think, from *Carter* v. *Carter*, 1896, P. 35, that such an order as is asked for cannot be made so far as future payments of alimony are concerned. The headnote of *Carter* v. *Carter* is "Where in a suit by a wife for judicial separation, an order for alimony *pendente lite* has been made against the husband, the Court refused to restrain the husband from dealing with certain of his property." In that case it did not appear that the husband was in default with respect to the payment of alimony. (The learned judge then reviewed the authorities.) The result, as I understand it, of all the cases is that the court will not grant an injunction in a case of alimony *pendente lite* unless there is a sum fixed and due by some order of the court. I think the proper order to make in this case is that the order should go against the husband so far as any sums due and fixed are now to-day existing, that is to say, there is an order for £73 9s. 2d. for costs; there are arrears of alimony amounting to £57 10s. which ought to have been paid up to the 8th of this month; and there are the costs of the motion £32 11s. 6d. Beyond that I cannot restrain the husband from dealing with his own property for future sums which may or may not ever come to be due. Mr. Rayden's book, at p. 193, para. 15, says, in terms: "Before an order for the payment of a fixed sum (or even after an order for alimony *pendente lite* has been made) the Court will not grant an injunction restraining the husband from so dealing with his property as to defeat alimony *pendente lite*." But, I think, there the learned author is thinking of future payments and not payments which are due. The cases seem to me to support my judgment certainly so far as costs are concerned, but in *Jagger* v. *Jagger*, *supra*, at p. 96, Mr. Justice Hill says: "And the effect of those cases is that an injunction can be granted after an order for alimony or maintenance and cannot be granted before order made." It is no doubt true, as urged on behalf of the respondent, that this is an attempt, by a side wind, to get security in a case in which no sum might become due apart from existing arrears, but nevertheless it seems to me that where an order for alimony *pendente lite* is made and is not obeyed, and yet, notwithstanding the respondent has money in his hands wherewith he could pay the money, it is only right that he should do so. For these reasons I allow this application, so far as it relates to the costs and arrears that I have mentioned.

COUNSEL: *Noel Middleton*, for the petitioner; *J. H. Watts*, for the respondent.
SOLICITORS: *Ernest G. Scott*; *Doyle, Devonshire & Co.*, for *E. Dennis Berry*.
[Reported by J. F. COMPTON-MILLER, Esq., Barrister-at-Law.]

Obituary.

MR. E. A. WILLIAMS.

Mr. Edward Austin Williams, solicitor, died suddenly from heart failure, at "Arlarie," Kew, Surrey, on Friday, the 23rd ult., aged eighty-two years. Admitted in 1874 he practised at Swansea for forty-five years, being senior member of the firm of Messrs. E. Austin Williams & Son, which carried on an extensive family and conveyancing practice there. He was a member of The Law Society and retired in 1919, when the firm was dissolved.

Rules and Orders.

THE GRAND JURIES (DISPENSATION AT QUARTER SESSIONS) RULES, 1927, DATED 11TH JUNE, 1927, MADE BY THE RULE COMMITTEE UNDER THE INDICTMENTS ACT, 1915 (5 & 6 GEO. 5, c. 90) PURSUANT TO SECTION 19 (4) OF THE CRIMINAL JUSTICE ACT, 1925 (15 & 16 GEO. 5, c. 86).

We, the Rule Committee, established under section 2 of the Indictments Act, 1915, pursuant to the powers vested in us by section 19, sub-section (4) of the Criminal Justice Act, 1925, hereinafter referred to as "the said enactment," do hereby make the following Rules:—

1. A recognizance to prosecute or to give evidence entered into by any person shall not in any way be affected by reason of an indictment being presented to a Court of Quarter Sessions in pursuance of the said enactment without a true bill having first been found by a Grand Jury.

2. The provisions of section 3 of the Indictable Offences Act, 1848 (*) shall apply to an indictment presented to a Court of Quarter Sessions in pursuance of the said enactment and to a person indicted therein as they respectively apply to an indictment found by a Grand Jury in such Court or to the person indicted therein.

3. The First Schedule to the Indictments Act, 1915, shall apply to all indictments presented to a Court of Quarter Sessions in pursuance of the said enactment, except that in its application—

(*a*) the following paragraph shall be substituted for paragraph (5) in Rule 1:

"(5) There shall be endorsed upon every indictment presented under section 19 of the Criminal Justice Act, 1925, the name of every witness intended to be examined on behalf of the prosecution in support of the indictment."

(*b*) the words "presentment of the Grand Jury" required by Rule 2 shall be omitted, and

(*c*) Rule 13 shall apply to an indictment, notwithstanding that a true Bill has not been found.

4. The forms in the Schedule to the Indictable Offences Act, 1848, or any forms substituted therefor, shall, for the purposes of the said enactment, be sufficient and all the necessary alterations therein shall be deemed to have been duly made.

5. An indictment presented to a Court of Quarter Sessions in pursuance of the said enactment shall be deemed to be presented at the sitting of the Court or at any later time by the leave of the Court.

6. These Rules may be cited as the Grand Juries (Dispensation at Quarter Sessions) Rules, 1927.

Dated the 11th day of June, 1927.

Hewart, C.J. — *Travers Humphreys.*
Horace E. Avory. — *Herbert Austin.*
Robert Wallace. — *W. B. Prosser.*
Herbert Stephen.

Approved.
Cave, C.

(*) 11-12 Vict. c. 42.

THE POOR PRISONERS' (COUNSEL AND SOLICITOR) RULES, 1927, DATED 3RD JUNE, 1927, MADE BY THE ATTORNEY-GENERAL, WITH THE APPROVAL OF THE LORD CHANCELLOR AND THE SECRETARY OF STATE FOR THE HOME DEPARTMENT, IN PURSUANCE OF SECTION 2 OF THE POOR PRISONERS' DEFENCE ACT, 1903 (3 EDW. 7, c. 38).

1. Every Clerk of Assize and Clerk of the Peace shall keep a list of solicitors who are willing to undertake the defence of poor prisoners, and shall insert in such list the names of all solicitors who are willing so to act. The name of any solicitor shall be removed from the list, either on the application of the solicitor himself or by direction of any Judge of Assize or Chairman of Quarter Sessions. A copy of such list shall be sent to every Clerk to Justices in the county or quarter sessions district.

2. Every Clerk of Assize and Clerk of the Peace shall keep a list of the members of the Bar attending the circuit or sessions who are willing to act as counsel for poor prisoners, and shall insert in such list the names of all such members of the Bar who are willing so to act.

3. Every Clerk to Justices and every Clerk of Assize and Clerk of the Peace shall keep a list of all cases in which application for legal aid is made to the Court, or in which the Court offers the prisoner legal aid, and shall record therein (*a*) the name of the prisoner, (*b*) in general terms the charge or charges preferred, (*c*) the date and the result of such application or offer, and he shall send a copy of such list to the Secretary of State for the Home Department at such times as the Secretary of State may from time to time direct.

4. Any certificate given by the Justices in pursuance of section 1 of the Poor Prisoners' Defence Act, 1903,(*) shall be in Form A in the Schedule hereto. It shall as soon as it has been given be sent by the Clerk to the Justices to the Clerk of Assize or Clerk of the Peace, together with the name of the solicitor assigned.

The certificate given by a Judge of Assize or Chairman of Quarter Sessions shall be in Form B in the Schedule hereto.

5. Any Justices, Judge of Assize, or Chairman of Quarter Sessions, who give such a certificate shall at the same time assign to the prisoner from the list kept under Rule 1 a solicitor to whose services the prisoner shall be entitled.

A copy of the depositions shall be furnished to the solicitor so assigned by the Justices' Clerk, Clerk of Assize, or Clerk of the Peace, as the case may be.

6. Any member of the Bar whose name appears upon the list kept under Rule 2 may be instructed on behalf of the prisoner by the solicitor so assigned.

7.—(1) These Rules may be cited as the Poor Prisoners' (Counsel and Solicitor) Rules, 1927.

(2) These Rules shall come into operation on the 1st July, 1927.

(3) The Rules dated May 13, 1904,(†) made in pursuance of section 2 of the Poor Prisoners' Defence Act, 1903, are hereby revoked.

Douglas McGarel Hogg,
Attorney-General.

Law Officers' Department.
3rd June, 1927.

Approved,
Cave, C.
W. Joynson-Hicks.

SCHEDULE.

FORM A.—CERTIFICATE OF COMMITTING JUSTICES.

We [*or* I] the committing justice[s] in the case of , having regard to the nature of the defence set up by him, as disclosed in the evidence given before us [*or* me] [*or* in the statement made by him before us] [*or* in the evidence given and statement made by him before us], are [*or* am] satisfied that it is desirable in the interests of justice that he should have legal aid in the preparation and conduct of his defence, and that his means are insufficient to obtain such aid, and we [*or* I] therefore certify that the said ought to have such legal aid.

A.B.,
C.D.,
Justice[s] of the Peace.

Note.—The prisoner has been committed to Prison [*or* has been released on bail and may be communicated with at].

FORM B.—CERTIFICATE OF JUDGE OR CHAIRMAN.

I, *A.B.* , having regard to the nature of the defence set up by , as disclosed in the evidence given [*or* in the statement made by him] [*or* in the evidence given and statement made by him] before the Committing Justices, am satisfied that it is desirable in the interests of justice that he should have legal aid in the conduct of his defence, and that his means are insufficient to enable him to obtain such aid, and I therefore certify that the said ought to have such legal aid.

A.B.,
Judge of Assize *or*
Chairman of Quarter Sessions *or*
Recorder of .

(*) 3 E. 7. c. 38. (†) S.R. & O. 1904 (No. 1056) p. 123.

Legal Notes and News.

Appointments.

Mr. T. HOWARD DEIGHTON, solicitor (Clerk to the Worshipful Company of Horners), of 90, Cannon-street, E.C.4, is undertaking the duties of Honorary Secretary for Alderman Sir William Waterlow, K.B.E., in connection with his candidature for the Shrievalty Election in June, 1928.

Professional Announcement.

Messrs. G. & A. COSENS have removed to No. TWO Laurence Pountney Hill.

Professional Partnerships Dissolved.

FRANK TIERNAY and ERIC BACHE POLITZER, solicitors, 23, Bedford-row, W.C.1 (Smith, Fawdon & Low), by mutual consent as from 10th August.

REGINALD MICHELL GRYLLS and HENRY ASHWELL CADMAN, solicitors, Cleckheaton and Gomersal, York (Cadman, Grylls and Co.), by mutual consent as from 4th April, 1927. R. M. Grylls and F. W. Hellewell, Heckmondwike, will continue to carry on the business at Cleckheaton and Gomersal under the style of Cadman, Grylls & Hellewell.

Wills and Bequests.

Mr. David Davies, solicitor, of Gwydyr, Cardigan, who died on 28th April, left estate of the gross value of £21,059. He left £200 to Dr. Barnardo's Homes; his books (other than his law books) to the Calvinist Methodist College, Aberystwyth; £1,500 to each of his servants, Violet Smart and Emily Davies, if respectively still in his service; and £200 to each of his former housekeepers, Rachel Wigley and Sarah Bridle.

Mr. John William White (seventy-three), of Well-street, Bury St. Edmunds, managing clerk of Messrs. Sparke and Son, solicitor, left estate of the gross value of £13,284.

Mr. George Percival Mason, of Queen's-road, Hoylake, Cheshire, senior partner in Mason, Grierson & Martin, solicitors, Liverpool, died on 31st July, aged fifty-nine, leaving estate of the gross value of £35,000. He gives £250 a year and furniture of the value of £150 to his housekeeper, Amy Millington, and £350 to William John Jenkins, cashier.

Mr. James Leslie Sweet, solicitor, Horsell, Surrey, and 2, Bedford-row, W.C., left estate of the gross value of £30,717.

Mr. Ernest Wilson Pierce, solicitor, Hooton, Cheshire, left estate of the gross value of £5,575.

Mr. William McClure, of Greenock, solicitor, Hon. Sheriff Substitute for Greenock, left personal estate in Great Britain of the gross value of £13,145.

NORTH-EASTERN CIRCUIT ASSIZES.

The following have been fixed as Commission Days for the Autumn Assizes on the North-Eastern Circuit:—Newcastle, 2nd November (civil and criminal); Durham, 11th November (criminal only); York, 18th November (criminal only); Leeds, 24th November (civil and criminal). Divorce business will be taken at all places. Mr. Justice Roche will travel the whole circuit, and will be joined at Leeds by Mr. Justice Salter.

SAFEGUARDING OF KEY INDUSTRIES.

SPECTACLES.

The Board of Trade announce that the complaint which they have received under s. 1, sub-s. (5) of the Safeguarding of Industries Act, 1921, that spectacles, eyeglasses and monocles have been improperly excluded from the lists of articles chargeable with duty under Pt. I of that Act, as amended by s. 10 of the Finance Act, 1926, will be heard by the tribunal constituted under s. 10, sub-s. (4) of the Finance Act, 1926, on Tuesday, 4th October, at 11 a.m. in the Main Conference Room of the Board of Trade (Room 47, second floor), Great George-street, London, S.W.1.

Stock Exchange Prices of certain Trustee Securities.

Bank Rate 4½%. Next London Stock Exchange Settlement Thursday, 13th October, 1927.

	Middle Price 28th Sept	Interest Yield.	Yield with Redemption.
English Government Securities.		£ s. d.	£ s. d.
Consols 4% 1957 or after	85	4 14 0	—
Consols 2½%	54⅛	4 12 0	—
War Loan 5% 1929-47	102$^{5}/_{16}$	4 18 0	4 18 6
War Loan 4½% 1925-45	97½	4 12 6	4 16 6
War Loan 4% (Tax free) 1929-42 ..	99⅞	4 0 0	4 0 0
Funding 4% Loan 1960-90	85$^{9}/_{16}$xd	4 13 6	4 14 6
Victory 4% Bonds (available for Estate Duty at par) Average life 35 years ..	93$^{8}/_{16}$	4 5 6	4 7 6
Conversion 4½% Loan 1940-44	97⅜	4 12 0	4 15 6
Conversion 3½% Loan 1961 ..	74$^{8}/_{16}$	4 14 0	—
Local Loans 3% Stock 1921 or after ..	63½	4 15 6	—
Bank Stock	254xd	4 14 0	—
India 4½% 1950-55	93½	4 16 6	4 19 0
India 3½%	69⅞	5 0 0	—
India 3%	59¾	5 0 0	—
Sudan 4½% 1939-73	92¾	4 17 0	4 18 0
Sudan 4% 1974	85	4 14 6	4 18 0
Transvaal Government 3% Guaranteed 1925-53 (Estimated life 19 years) ..	80¼	3 14 0	4 12 6
Colonial Securities.			
Canada 3% 1938	85	3 11 6	4 18 0
Cape of Good Hope 4% 1916-36 ..	92½xd	4 6 6	5 0 6
Cape of Good Hope 3½% 1929-49 ..	81	4 6 6	5 0 0
Commonwealth of Australia 5% 1945-75	98½	5 1 6	5 3 0
Gold Coast 4½% 1956	95	4 14 6	4 17 6
Jamaica 4½% 1941-71	90	5 0 0	5 0 0
Natal 4% 1937	92½	4 7 0	5 0 0
New South Wales 4½% 1935-45 ..	90¾	5 0 0	5 7 0
New South Wales 5% 1945-65 ..	98¼	5 2 0	5 4 0
New Zealand 4½% 1945	95¾	4 14 0	4 17 6
New Zealand 5% 1946	102½	4 17 6	4 16 6
Queensland 5% 1940-60	97½	5 3 0	5 4 0
South Africa 5% 1945-75	102¼	4 17 6	4 18 6
S. Australia 5% 1945-75	98¾	5 1 6	5 2 6
Tasmania 5% 1945-75	100½	4 19 6	5 1 0
Victoria 5% 1945-75	99⅝	5 0 6	5 1 0
W. Australia 5% 1945-75	99¼	5 1 0	5 2 0
Corporation Stocks.			
Birmingham 3% on or after 1947 or at option of Corpn.	63½	4 15 0	—
Birmingham 5% 1946-56	102⅛	4 18 0	4 18 6
Cardiff 5% 1945-65	101⅛	4 19 0	4 19 0
Croydon 3% 1940-60	68½	4 8 6	5 0 0
Hull 3½% 1925-55	77¾	4 10 0	5 0 0
Liverpool 3½% redeemable at option of Corpn.	72½	4 16 6	—
Ldn. Cty. 2½% Con. Stk. after 1920 at option of Corpn.	52¾	4 15 6	—
Ldn. Cty. 3% Con. Stk. after 1920 at option of Corpn.	63¼	4 15 0	—
Manchester 3% on or after 1941 ..	63¾	4 14 0	—
Metropolitan Water Board 3% 'A' 1963-2003	62½	4 16 0	4 17 0
Metropolitan Water Board 3% 'B' 1934-2003	64	4 14 0	4 16 0
Middlesex C. C. 3½% 1927-47	82	4 5 6	4 17 0
Newcastle 3½% Irredeemable	73	4 16 0	—
Nottingham 3% Irredeemable	63½	4 14 6	—
Stockton 5% 1946-66	101¼	4 19 0	4 19 6
Wolverhampton 5% 1946-56	100½xd	4 19 6	5 0 0
English Railway Prior Charges.			
Gt. Western Rly. 4% Debenture ..	81¾	4 18 0	—
Gt. Western Rly. 5% Rent Charge ..	98½	5 1 6	—
Gt. Western Rly. 5% Preference ..	92½	5 8 0	—
L. North Eastern Rly. 4% Debenture ..	75½	5 6 0	—
L. North Eastern Rly. 4% Guaranteed	70	5 14 6	—
L. North Eastern Rly. 4% 1st Preference	62½	6 8 0	—
L. Mid. & Scot. Rly. 4% Debenture ..	80¾	4 19 0	—
L. Mid. & Scot. Rly. 4% Guaranteed ..	76¾	5 4 6	—
L. Mid. & Scot. Rly. 4% Preference ..	71	5 12 6	—
Southern Railway 4% Debenture ..	79¾	5 0 6	—
Southern Railway 5% Guaranteed ..	95½	5 5 0	—
Southern Railway 5% Preference ..	86⅜	5 15 0	—